

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,
Plaintiff, Counter-defendant,
v.
APPLE INC.,
Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

JOINT STATUS REPORT

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to Your Honor's Discovery Standing Order, the Parties in the above-captioned action respectfully submit this joint statement related to the ongoing evidentiary hearings concerning Plaintiff Epic Games, Inc.'s ("Epic") Motion to Enforce Injunction (Dkt. 897 (the "Motion")).

Respectfully submitted,

CRAVATH, SWAINE
& MOORE LLP

WEIL, GOTSHAL & MANGES LLP

By: /s/ Yonatan Even
Yonatan Even
*Counsel for Epic Games,
Inc.*

By: /s/ Mark A. Perry
Mark A. Perry
Counsel for Apple Inc.

Epic’s Position: On August 8, 2024, Apple was ordered to substantially complete document production by September 30, 2024—approximately a month from today. (Dkt. 1008 at 2.) Apple committed to doing so on a rolling basis. (See Dkt. 1001 at 3 (“Apple is working diligently on rolling document productions in this matter.”); Dkt. 1004 at 3 (“Apple will review and produce documents on a rolling basis . . .”).) Despite those commitments, Apple has still not made *any* significant document production.

On July 9, 2024, Apple identified roughly 650,000 documents as potentially responsive to Epic’s requests. In the aggregate, as of today, Apple has produced fewer than 1,500 documents in total. As Epic has previously described, in June 2024, Apple produced approximately 1,200 documents, many of which are reproductions of documents Apple had previously produced with various deficiencies.¹ On August 14, 2024, the day of the Parties’ prior status report, Apple produced another 210 additional documents—124 custodial documents and 86 documents from shared locations linked in the documents produced back in June. Apple has not produced any additional documents since.

Apple’s deadline to substantially complete production is a month away, meaning that (if it even complies with the Court’s order) Apple will dump virtually all of its document production into the final month of the discovery period—an entirely backloaded production, despite Apple’s express commitment to make rolling productions. Apple’s most recent commitment below, to make “its next robust production in the coming days” and to make “at least” three productions by September 30, does nothing to ameliorate the backloaded nature of Apple’s production. Apple’s foot-dragging has been and continues to be clearly calculated to delay Epic’s ability to review Apple’s production and, ultimately, to delay the adjudication of Apple’s non-compliance with the Court’s injunction.

Apple’s repeated assertions that its production has been delayed by, among other things, its privilege review only compounds the problem. The limited privilege logs that Apple has provided to date raise serious concerns about the privilege calls that Apple has been making. Epic will be meeting and conferring with Apple about the issues it has identified in Apple’s existing privilege logs in the coming weeks. While Apple has committed below to providing Epic with additional privilege logs within 10 days of each production, consistent with the ESI Protocol (Dkt. 245 ¶ 12), Epic expects these backloaded privilege logs to be substantial and to require additional time both for Epic to review and for the Parties to confer regarding any issues, potentially resulting in even further delay.

Apple’s Position: Apple is moving forward expeditiously with custodians, document collections, and reviewing documents for production.

Custodians and Document Collections. The Parties agreed on 52 custodians. Apple is currently reviewing the documents with hundreds of reviewers dedicated to the immense undertaking. These reviewers are evaluating the documents for relevance, confidentiality, and privilege. A large outside counsel team is dedicated to finalizing the reviews and readying the documents for production.

¹ Apple reproduced some of these documents in July 2024 to address additional technical deficiencies, but Apple did not produce any new documents in July.

Phase Two Production. As stated in the August 14 Joint Status Report (Dkt. 1011), Apple will roll its productions and, barring any unexpected issues that may arise during the review, it intends to make its next robust production in the coming days, with more productions to follow leading up to the substantial completion deadline. Apple anticipates it will make at least three rolling productions by the Court's substantial completion deadline of September 30, 2024.

Privilege logs. Apple produced a privilege log in reference to its August 14, 2024 production on August 23, 2024. Apple has produced all privilege logs to date in compliance with the Amended ESI Protocol (Dkt. 245) and will continue to do so.

Finally, although Epic signals to the Court that it has "serious concerns" with the privilege logs Apple has provided to date, Epic has not raised the issue at all with Apple. Apple stands ready to meet and confer when any concerns are appropriately raised.

Respectfully submitted,

DATED: August 28, 2024

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By: /s/ Mark A. Perry

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